

SUMMARY

As demonstrated by the petitions filed by CompTel and others in this proceeding, the public interest requires that the FCC modify its decisions in its First Report and Order on the presubscribed interexchange carrier charge ("PICC") for multi-line business customers and switched local transport. These decisions will significantly increase long distance rates for small businesses and rural subscribers and are not justified by a corresponding increase in costs. The Senate Commerce Committee recently expressed similar concerns in a letter to the FCC ("Senate Letter"). To prevent immediate harm to small businesses and rural subscribers and to carriers serving these customers, the FCC should modify its rules governing the multi-line business PICC and tandem-switched transport as expeditiously as possible.

The petitions confirm that the FCC's decision to establish a multi-line business PICC of \$2.75/line per month will increase the total switched access costs of smaller long distance carriers by as much as 500%. The petitions demonstrate that the harm to low-volume multi-line business customers will be equally severe; for example, the County of Los Angeles calculates that the multi-line business PICC will increase its per-minute rate for interstate calls to \$.68/minute. The FCC's PICC regime is discriminatory, since the multi-line business PICC is more than 500% higher than the PICC for single-line residential and business customers, while the underlying costs of service are the same. Furthermore, since the multi-line business PICC is simply a subsidy to single-line residential and business users, it violates the 1996 Act's requirements that subsidies for universal service be explicit, nondiscriminatory, and equitable. Thus, the FCC should eliminate, or at least sharply reduce, the multi-line business PICC.

The petitions also confirm that the FCC's decision to increase the tandem switching charge to recover 100% of the tandem revenue requirement will result in higher rates and fewer carrier choices for rural subscribers. There is general agreement that current tandem switching rates are close to cost-based and that the FCC's decision will increase these rates by approximately 400%. This will exacerbate the already discriminatory overhead loadings imposed upon tandem-switched transport users, thereby contradicting the Court's decision last year in Competitive Telecommunications Association v. FCC. Furthermore, the record confirms that the FCC's new pricing rule will place smaller carriers at an uneconomic competitive disadvantage.

Many petitioners join CompTel in seeking reinstatement of the unitary pricing option for tandem-switched transport -- the pricing option endorsed by the Senate Letter. The FCC cannot discard the unitary pricing option on the grounds that users of switched transport prefer the actual tandem routing undertaken by the ILEC, since the record confirms that users have no control over the number or locations of tandems. Furthermore, the FCC's decision will increase the costs to long distance carriers to serve rural areas and thus will increase retail rates for rural subscribers and reduce the carrier choices. Since the ILECs route both dedicated and tandem-switched transport traffic through intermediate tandem locations, there are no technical or cost differences that can justify giving dedicated-trunked users a unitary pricing option while imposing a three-part rate structure on carriers using tandem-switched transport. In light of these facts, the FCC should reinstate the unitary pricing option.

CompTel supports additional requests for reconsideration and opposes others, as shown herein.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	
for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure)	
and Pricing)	CC Docket No. 91-213
)	
End User Common Line Charges)	CC Docket No. 95-72
)	

TO: The Commission

COMMENTS OF COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, submits these comments on the petitions for reconsideration submitted on July 11, 1997 regarding the FCC's First Report and Order (FCC 97-158) ["First Report"] released on May 16, 1997 in the above-captioned proceedings.

The petitions filed by CompTel and numerous other parties demonstrate that the FCC must modify its new rules governing the presubscribed interexchange carrier charge ("PICC") and the switched local transport rate structure and levels as expeditiously as possible. The FCC's decision to establish a multi-line business PICC of \$2.75/line per month as a transitional subsidy mechanism will cause irreparable harm to small business customers with relatively low interstate usage per line and to the long distance carriers who focus upon serving those customers. The FCC must eliminate, or at least sharply reduce, the

multi-line business PICC to avoid causing an immediate increase in rates and loss of carrier choices for low-volume small business customers as of January 1, 1998.

Equally important, the FCC must rescind its decision to increase the tandem switching charge by approximately 400% and to abolish the unitary pricing option that all tandem-switched transport customers use today. Those decisions will increase prohibitively the rates paid by tandem-switched transport users without any relationship to the underlying costs incurred by incumbent local exchange carriers ("ILECs") to serve those customers. The result will be higher rates and fewer carrier choices for rural subscribers. The FCC's new transport rules also will create uneconomic incentives for long distance carriers to use dedicated-trunked routing even when tandem-switched routing is more efficient, thereby distorting the interoffice investment, deployment and routing decisions by both ILECs and long distance carriers. It is critical that the FCC correct those erroneous policies as quickly as possible to avoid the immediate competitive and consumer dislocation its policies will cause.

In a letter to FCC Chairman Hundt dated July 25, 1997,¹ eleven U.S. Senators voiced the Senate Commerce Committee's "long-standing concerns over any move by the FCC to alter access pricing rules where the immediate effect would be to diminish competition in rural and less populated suburban areas" as well as its support for the unitary rate structure. The Senators challenged the FCC's decision "to prescribe substantial increases in the price of tandem transport -- without any benefit of cost studies." The Senators deemed it "completely unacceptable" for the FCC to adopt rules that would have the

¹ See Letter from Senators Burns, Dorgan, Wyden, Stevens, Lott, Hollings, Harkin, Rockefeller, Kerrey, Bryan, and Breaux to Honorable Reed Hundt, FCC (July 25, 1997) (copy attached) [hereinafter "Senate Letter"].

effect of "increas[ing] the transport costs of smaller carriers on the order of several hundred percent." Noting that the effect of the FCC's decision could be to increase prices for rural customers and to force long distance carriers to exit that market segment, the letter concluded that the FCC's new transport rules are "directly contrary to the intent of Congress in enacting the 1996 Act." The letter concluded with a request that the FCC "reconsider this potentially disastrous change and replace it with a switched access pricing system that continues to promote choice in all areas of the country." CompTel concurs fully with the letter and urges the FCC to reinstate expeditiously its pre-existing rules for the tandem switching charge and the unitary pricing option for tandem-switched transport.

Lastly, CompTel supports additional requests for reconsideration of the FCC's access charge rules, and opposes other requests, as shown below.

I. MULTI-LINE BUSINESS PICC

CompTel strongly supports the five petitions, in addition to CompTel's, that seek reconsideration of the FCC's decision to establish a multi-line business PICC of \$2.75/line per month beginning January 1, 1998.² The record shows conclusively that the FCC's PICC regime will have a devastating impact upon low-volume small business customers and the smaller long distance carriers who focus upon serving them. In its own petition, CompTel demonstrated that the multi-line business PICC would increase the total switched access costs of smaller long distance carriers serving low-volume small business customers by as much as

² See Petition for Expedited Reconsideration filed by America's Carriers Telecommunications Association ("ACTA"); Joint Petition for Reconsideration filed by KLP, Inc. d/b/a Call-America and Yavapai Telephone Exchange, Inc. ("Call America" and "YTE"); Petition for Reconsideration of the Telecommunications Resellers Association ("TRA"); Petition for Reconsideration of the County of Los Angeles; and Petition for Reconsideration of U.S. Long Distance, Inc. ("USLD").

500%.³ Call America and YTE -- both small long distance carriers focusing upon the low-volume small business market -- presented data showing that the PICC would increase their interstate access costs by approximately 90% and 500%, respectively.⁴ TRA estimated that the PICC would cause a net 100% increase in the interstate access costs of a typical smaller long distance carrier.⁵ Given the record evidence that profit margins for carriers serving this market segment are substantially less than \$.01/minute,⁶ it is clear that the PICC will have an immediate and devastating impact upon small long distance carriers and force many of them to exit the market on or shortly after January 1, 1998. As TRA noted succinctly, "[t]he competitive and financial damage inflicted on the small carrier community during the transitional period will be widespread and irreparable."⁷

The harm to low-volume multi-line business customers, including state and local government bodies as well as small business users, will be equally severe. The County of Los Angeles calculated that the net impact of the multi-line business PICC would be to increase its telephone costs by \$2.8 million per year, thereby effectively increasing its per-

³ See Expedited Petition for Reconsideration of Competitive Telecommunications Association at 2-6 & Att. 1.

⁴ Call America and YTE Petition at 3.

⁵ TRA Petition at iii and 5.

⁶ Call America and YTE Petition at 3 (Call America's profit margin is approximately \$.005/minute and multi-line business PICC will increase its effective per-minute interstate access costs by approximately \$.02/minute); TRA Petition at 9 (multi-line business PICC will increase effective per-minute interstate access costs of small carriers by \$.02-.03/minute compared to typical profit margins of less than \$.01/minute).

⁷ TRA Petition at 7. See also Petition of ACTA at 2 & 7 (multi-line business PICC will cause "severe and irreparable harm," forcing many long distance carriers serving low-volume small business customers to go out of business); Call America and YTE Petition at 7 (multi-line business PICC threatens to "wipe out entire market segments" in the long distance industry).

minute rate for interstate calls to an eye-popping \$.68/minute.⁸ Call America presented data for 12 of its customers showing that the multi-line business PICC will increase those customers' interstate access costs by from 10% to 1169%.⁹ As the County of Los Angeles noted, while the FCC may be correct that PICC will not have a serious net negative effect for the "majority" of multi-line business customers, the record is now clear that it will have disastrous consequences for a large number of multi-line business customers and the smaller long distance carriers who focus upon serving them.¹⁰

Apart from its negative impact upon smaller long distance carriers and their customers, the FCC's PICC regime is discriminatory and inconsistent with the FCC's goal of cost-causative rates. The FCC has imposed a PICC upon multi-line business customers that is more than 500% higher than the PICC for single-line residential and business customers even though there are no differences in the underlying costs of serving those subscribers. Given that the multi-line business PICC is a pure subsidy, the FCC should establish a recovery mechanism that does not impose onerous burdens upon, or cause irreparable harm to, any particular class of subscribers or the carriers who focus upon serving those subscribers. The FCC cannot justify the PICC on the ground that non-traffic sensitive ("NTS") costs should be recovered through flat fees.¹¹ That theory does not justify recovering one class of subscribers' NTS costs through flat fees imposed upon a completely different class of subscribers.

⁸ County of Los Angeles Petition at 1, 3 n.3 & 5.

⁹ Call America and YTE Petition at 4 & Att. A.

¹⁰ County of Los Angeles Petition at 2 (citing First Report at ¶ 80).

¹¹ See TRA Petition at 6 (citing First Report at ¶¶ 35-36).

Further, several petitioners joined CompTel in challenging the FCC's PICC regime as violating the statutory prohibition against building implicit subsidies into the access charge regime.¹² Section 254(e) of the Telecommunications Act of 1996 requires such subsidies to be made "explicit." Certainly that provision cannot reasonably be construed to permit the FCC to establish new implicit subsidies that did not exist previously. Further, due to its proven discriminatory impact on low-volume business customers and the carriers who focus upon serving them, the multi-line business PICC is inconsistent with the requirement of Section 254(d) that every carrier must pay universal service support on an "equitable and nondiscriminatory basis." The multi-line business PICC requires smaller carriers serving low-volume small business customers to pay an inequitable and discriminatory portion of the subsidy created to make telephone service more affordable for single-line residential and business subscribers.

¹² See CompTel Petition at 5-6; USLD Petition at 3; Call America and YTE Petition at 7; TRA Petition at 6.

II. SWITCHED LOCAL TRANSPORT

A. The Tandem Switching Charge.

Numerous petitioners joined CompTel in challenging the FCC's decision to increase the tandem switching charge to recover nearly 100% of the tandem revenue requirement.¹³ There is general agreement both that current tandem switching rates are a "fairly close approximation" of cost-based, market-driven rates,¹⁴ and that the impact of the FCC's decision will be to increase tandem switching rates by approximately 400%.¹⁵ That is a senseless result that will impose a needless cost penalty upon the carriers who provide long distance service to rural and other areas via tandem-switched transport. The inevitable result will be higher rates for rural customers (e.g., more widespread use of mandatory minimums) and a severe reduction in carrier choices for rural subscribers as long distance carriers exit the rural market.¹⁶ As the Senate Letter states plainly, this is precisely the opposite of what Congress intended when it adopted the 1996 Act.

Further, the FCC's decision to increase the tandem switching rate by approximately 400% will exacerbate the already discriminatory overhead loadings imposed upon tandem-

¹³ See CompTel Petition at 7-16; WorldCom Petition at 4-7; ACTA Petition at 4; USLD Petition at 4-5; Call America and YTE Petition at 8-9; Frontier Petition at 8-13.

¹⁴ ACTA Petition at 4; see CompTel Petition at 8-9 & Attachment 2.

¹⁵ See ACTA Petition at 4; USLD Petition at 4; Call America and YTE Petition at 9.

¹⁶ The loss of choices will be felt not only in the long distance market, but in the local market as well. As long distance carriers exit the rural market (or have to pay a cost penalty to continue providing long distance service to rural customers), they will not be able to enter the local market to compete against the ILECs. As CompTel has previously advised the FCC, reinstating the previous rules regarding the tandem-switched transport rate structure and levels is a crucial action item for the FCC in implementing the provisions of the 1996 Act to promote the development of local competition. See Letter from G. Morelli, CompTel, to W. Caton, FCC (August 11, 1997) (submitted as ex parte presentation in CC Docket No. 96-262).

switched transport users,¹⁷ thereby contradicting the Court's decision last year in Competitive Telecommunications Association v. FCC, 87 F.3d 522 (D.C. Cir. 1996) [CompTel"]. The FCC has previously conceded that the tandem revenue requirement does not remotely reflect the "costs" of tandem switching,¹⁸ and the FCC has never justified its decision to establish a fully-embedded revenue requirement for tandem switching while permitting other transport rate elements to be priced closer to economic costs.¹⁹ As WorldCom correctly notes, the FCC has "neither adequately justify[d] the overhead assignments to different types of transport offerings nor explain[ed] the departure from cost-based pricing" as required by the Court's decision.²⁰

The record confirms that the FCC's new pricing rule for tandem switching will undermine interexchange competition significantly. There is no dispute that smaller carriers rely much more heavily than the largest carriers upon tandem-switched transport.²¹ Forcing tandem users to pay a far higher proportion of the ILECs' overheads than dedicated-trunked users will create uneconomic competitive advantages for the largest carriers. USLD

¹⁷ See CompTel Petition at 12 (noting that FCC's decision increased overhead loading disparity between direct-trunked and tandem-switched transport users by "several orders of magnitude"); WorldCom Petition at 4 (estimating that FCC's decision will "lead to ILECs' recovering a dramatically higher proportion of overhead loadings from tandem switching than from any other interstate access service").

¹⁸ See Call America and YTE Petition at 9 (quoting FCC's brief to the Court in the CompTel case). The Court's finding that the tandem revenue requirement is "grossly excessive" stems from the previously undisputed recognition by the FCC and all parties that pricing the tandem switching charge to recover a full loading of switched access overheads under 47 C.F.R. Part 69 would lead to rate levels far in excess of the actual costs of providing tandem switching.

¹⁹ See WorldCom Petition at 4-8.

²⁰ WorldCom Petition at 4.

²¹ See CompTel Petition at 9 & n.4.

correctly points out that the FCC's new rule effectively operates as a discriminatory subsidy from smaller carriers to the largest carriers.²² That decision is not only bad policy, it is contrary to the 1996 Act. As the Senate Letter states, "[i]t was not the Senate commerce Committee's intent that the Act be used to promote the interests of larger carriers over smaller ones."

B. The Unitary Rate Structure.

CompTel strongly supports those petitioners who have joined with CompTel in seeking reinstatement of the unitary pricing option for tandem-switched transport.²³ That is the pricing option that all long distance carriers use and prefer today, and it is the pricing option that competitive local carriers can and will use in competition against the ILECs.²⁴ The Senate Letter noted (at 2) that the Senate Commerce Committee views the unitary rate structure as proven through time to be "a workable formula for reasonable rates and competitive choices throughout the nation." It is contrary to the FCC's objective of developing cost-based, market-driven access rates to prohibit the ILECs from continuing to use the rate structure that works well today, that access customers prefer, and that competitive local entrants are developing for their own services.

The FCC's decision to permit dedicated-trunked transport users to continue using a unitary pricing option, while forcing tandem-switched transport customers to use a new,

²² USLD Petition at 3-4.

²³ See CompTel Petition at 16-23; WorldCom Petition at 10-21; USLD Petition at 5-7; Call America and YTE Petition at 9; TRA Petition at 12-17; Excel Petition at 3-7 & 9-10; Telco Communications Petition at 4-7; Frontier Petition at 3-8; RCN Petition at 10.

²⁴ See CompTel Petition at 21; Frontier Petition at 6 n.18.

more expensive three-part structure, is based upon a fundamental misunderstanding of interoffice transport routing. The FCC's apparent belief that tandem-switched transport users have an affirmative preference for tandem-switched routing is incorrect. As WorldCom notes, "[f]or both types of transport, the access customer does not care how the ILEC routes the traffic within its network or what intermediate points in that network the traffic passes through, as long as it reaches its desired end location."²⁵ Further, the tandem-switched user has no control over the number or location of tandems within the interoffice network.²⁶ Therefore, the FCC cannot discard the unitary pricing option for tandem-switched users on the theory that such users have an affirmative preference for the actual tandem routing undertaken by the ILEC.

The FCC's selective discontinuation of the unitary pricing option for tandem-switched users is repudiated by the now undisputed fact that both types of transport traffic is routed through intermediate tandem locations at the discretion of the ILEC.²⁷ If, as the FCC appears to believe, the unitary rate structure is not cost-causative and pro-competitive for tandem-switched users (a conclusion which CompTel does not share), then the same must be true for dedicated-trunked users as well. The only difference in the routing of dedicated-trunked and tandem-switched traffic is that the latter undergoes tandem switching, and the ILECs impose a separate charge to recover the costs of that function. There are no technical or cost differences that can justify permitting dedicated-trunked users to have a unitary

²⁵ WorldCom Petition at 11.

²⁶ See CompTel Petition at 19-20; WorldCom Petition at 14.

²⁷ See CompTel Petition at 18; WorldCom Petition at 10 n.16 & 13; Telco Communications Petition at 4-6.

pricing option, while forcing smaller carriers who depend upon tandem-switched transport to use a more cumbersome and expensive three-part rate structure.

Moreover, it is the three-part structure, not the unitary pricing option, that fails to reflect the way in which ILECs incur transport costs. The three-part structure would make carriers' transport costs significantly more distance sensitive, even though, as the FCC concedes,²⁸ ILECs' transport costs are becoming, and should become, less distance sensitive.²⁹ The ILECs' decision to backhaul traffic to a tandem location before routing it to the serving wire center does not entail a piece-part rate structure. As WorldCom aptly noted, "[t]his would be like Federal Express charging for mileage to Memphis and back for a package sent from Washington, D.C. to New York."³⁰ There are scores of services provided by ILECs and long distance carriers where rates are established on an end-to-end basis rather than on the carrier's actual routing of the traffic.

The FCC's decision to dispense with the unitary pricing option for tandem-switched transport will have severe negative consequences. First, it will inflate the costs incurred by long distance carriers to serve rural areas, thereby increasing retail rates for rural subscribers and reducing the carrier choices available to those subscribers. As such, it would roll back the development, noted in the Senate Letter (at 2), whereby "non-urban businesses and residents who use the services of the smaller and medium-sized long distance carriers are now getting the carrier choice, service options, and innovations that many urban customers take for granted." Second, discarding the unitary pricing option will undermine

²⁸ E.g., First Report at ¶ 154.

²⁹ See WorldCom Petition at 12; Telco Communications Petition at 4; RCN Petition at 6-7; Excel Petition at 7-9.

³⁰ WorldCom Petition at 14.

interexchange competition by giving the largest long distance carriers an uneconomic cost advantage from using dedicated-trunked transport, while imposing a cost penalty upon the smaller long distance carriers who are forced to depend upon tandem-switched routing.

Third, the unitary rate structure provides a necessary incentive for ILECs to configure their interoffice networks to ensure the most efficient routing of all local and toll traffic over those networks. Under the more expensive three-part structure, the ILECs will have an incentive to maximize revenues through circuitous interoffice routing and long distance carriers will be forced to migrate to dedicated-trunked transport in situations where tandem-switched routing is more efficient.

C. The 9000 MOU Factor.

In its Petition, CompTel argued that the FCC should reconsider its decision to require ILECs to set per-minute tandem-switched transport rates using actual voice-grade circuit loadings.³¹ Other petitioners agree that this rule change creates incentives for the ILECs to deploy shared circuits in a manner that is inefficient for interstate tandem-switched traffic and that the current loading factor of 9000 minutes of use per circuit per month better serves the public interest.³² If an ILEC decides to load fewer interstate tandem-switched minutes on its circuits to achieve other objectives, such as ensuring spare capacity for overflow traffic from dedicated-trunked transport users or handling more local and intraLATA traffic, long distance carriers should not be forced to bear the costs associated with the additional circuits required.

³¹ Petition at 23.

³² Petition for Expedited Reconsideration and Clarification of Sprint Corp. ("Sprint") at 8; WorldCom Petition at 9.

If the FCC decides to retain the actual loading requirement, the FCC should adopt the modifications proposed by WorldCom.³³ Actual loadings should be based on the total amount of all traffic traversing the shared circuits between tandems and end offices and not just on the total minutes of interstate tandem-switched traffic. Since a minute of traffic is a minute of traffic, regardless of whether that minute is intrastate, interstate, local, tandem-switched, dedicated-trunked, or some other nature, the total number of minutes must be counted to determine the portion of the costs attributable to tandem-switch minutes. Furthermore, the FCC should require each ILEC to demonstrate that it is in fact capable of measuring the traffic and can do so accurately. If the LEC cannot accurately measure actual traffic loadings and ends up "guesstimating" the traffic instead, the FCC would have moved no closer to assuring that the transport rate is based on the ILECs' actual costs.

D. Multiplexer Charges For Tandem-Switched Transport.

WorldCom has asked the FCC to reconsider its decision to create a new tandem multiplexing rate element applicable solely to tandem-switched transport users.³⁴ CompTel supports WorldCom's request. ILECs perform multiplexing at the tandem location for both tandem-switched and dedicated-trunked transport.³⁵ There is no record basis for concluding that the multiplexing costs for dedicated-trunked traffic are built into the transport transmission rates, while the multiplexing costs for tandem-switched traffic are not. Indeed, given that the FCC required ILECs to calculate the tandem-switched transmission rate as a

³³ WorldCom Petition at 9-10.

³⁴ WorldCom Petition at 18-19.

³⁵ E.g., Letter from J. Smith, CompTel, to R. Hundt, FCC (April 28, 1997) (Attachment showing processing of direct-trunked transport traffic at the tandem location).

blend of the DS1 and DS3 dedicated-trunked transport rates, the FCC cannot conclude that the multiplexing costs are recovered differently for dedicated-trunked and tandem-switched traffic. Therefore, the FCC should impose this multiplexing on both types or neither type of transport traffic.

E. Waiver of Non-Recurring Charges.

CompTel supports the request of several petitioners that the FCC expand the waiver of the ILECs' non-recurring charges to situations where long distance carriers move their point of presence ("POP") closer to the tandem location.³⁶ Because such a reconfiguration would be a logical and possibly necessary response by a smaller long distance carrier to the FCC's decision to abandon the unitary pricing option for tandem-switched transport, the reasons for establishing the waiver plainly justify expanding the waiver to include this type of reconfiguration. Of course, no such waiver would be necessary if the FCC, as CompTel and numerous other parties have requested, reinstates the unitary pricing option.

III. OTHER ISSUES

A. Retail Marketing Expenses.

The FCC concluded in its First Report that the ILECs' retail marketing costs allocated to the interstate jurisdiction should be recovered from multi-line business and non-primary residential line customers, since the LECs' marketing efforts are directed at these users.³⁷

³⁶ See Telco Communications Petition at 9-10; Excel Petition at 10-11; RCN Petition at 8.

³⁷ First Report at ¶¶ 319-322.

However, as AT&T correctly argues in its petition,³⁸ the FCC's decision inefficiently limits the recovery of retail marketing expenses from multi-line business and non-primary residential users through the SLCs to the caps established for these categories and provides that any unrecovered costs be recovered through the PICCs and, if necessary, per-minute charges on originating access service.³⁹ CompTel agrees with AT&T that the FCC should lift the SLC cap for multi-line business and non-primary residential line customers to permit full recovery of these costs directly from end users.⁴⁰ As the FCC observes in its First Report, continued recovery of these costs through access charges raises competitive concerns, in that it enables the ILECs to move the costs of competing in the local access market onto their potential competitors, the long distance carriers. In the interests of promoting local competition, the FCC should require all retail marketing expenses to be recovered directly from end users as suggested by AT&T.

USTA in its petition argues that the FCC should permit recovery of retail marketing expenses from single line residence and business customers as well as from multi-line business and non-primary residential users.⁴¹ However, USTA would maintain SLC caps and recover any additional costs through the PICCs. USTA's proposal to allow recovery of retail marketing expenses directly from primary residential and single-line business users through the SLC is consistent with the principles of cost-causation. However, for the reasons stated above, all retail marketing costs must be recovered through the SLCs, not the

³⁸ Petition for Reconsideration and Clarification of AT&T Corp. ("AT&T") at 8.

³⁹ First Report at ¶324.

⁴⁰ AT&T Petition at 10.

⁴¹ United States Telephone Association ("USTA") Petition for Reconsideration and/or Clarification at 6-8.

PICCs, and thus the FCC should raise the SLC caps for the purposes of recovering retail marketing expenses if these costs cannot be recovered within the caps adopted in this proceeding. If the FCC is unwilling to lift the SLC caps, then the ILECs should forego recovery of any retail marketing costs that cannot be recovered through the SLCs.

B. PICC Implementation Issues.

Sprint raises practical problems with the FCC's proposal to implement PICCs. These issues provide further evidence of the need for the FCC to address the issues raised on reconsideration in this proceeding on an expedited basis well in advance of effective dates of the new rules. Of course, these concerns are irrelevant if the FCC eliminates the multi-line PICC as CompTel and other petitioners propose.

Access billing verification. CompTel agrees with Sprint's assessment that the LECs should be required to provide information to the long distance carriers about how many and what kinds of PICCs are being assessed for each of their prescribed customers.⁴² Without this information, long distance carriers will not be able to verify the access bills they receive from LECs, nor will they be able to pass through accurately their access costs to their customers.

Assignment of Primary and Non-Primary Residential Lines to Long Distance Carriers. CompTel also agrees with Sprint's argument that the FCC needs to provide immediate guidance on how the ILECs will determine, for residential subscribers with more than one line, which line is primary and which line is non-primary.⁴³ As Sprint notes in its

⁴² Sprint Petition at 3.

⁴³ Sprint Petition at 5.

Petition, unless the FCC directs the ILECs on how to designate primary and non-primary lines, it is entirely possible that an ILEC will designate each line so as to assure that the line presubscribed to their own long distance carrier services has the lowest PICC charges. This would inefficiently and unfairly burden competing long distance carriers with higher costs. CompTel believes that Sprint's proposal to designate the first-installed line as the primary line is an acceptable interim solution, although as Sprint notes in its Petition, such a solution would not address the situation where a residential customer orders multiple lines at the outset.

C. Compliance with the Regulatory Flexibility Act.

ACTA argues in its petition that the FCC should reconsider its First Order because it did not conduct a proper analysis as required under the Regulatory Flexibility Act⁴⁴ of the impact of its rule changes on small entities.⁴⁵ CompTel agrees with ACTA's assessment. As CompTel argued in its Petition, the multi-line PICC will have a dramatic and immediate adverse impact on small long distance carriers.⁴⁶ Because these carriers will have no choice but to pass the PICC charges onto their subscribers in the form of higher long distance rates, these carriers will be vulnerable to losing the critical mass of their customer base and to being forced out of the market. Furthermore, the FCC's decision to increase the tandem switching rate by approximately 400 percent and to eliminate the unitary pricing option for tandem-switch transport will make it enormously if not prohibitively expensive for smaller

⁴⁴ 5 U.S.C. §601 et. seq.

⁴⁵ ACTA Petition at 3.

⁴⁶ Petition at 4-5.

long distance carriers to serve rural markets, since these carriers rely heavily on tandem-switched transport.⁴⁷ Since the FCC's final regulatory flexibility analysis is cursory and does not in any way address or even recognize these issues, the FCC is obligated to take this matter into account during the reconsideration phase of this proceeding. Conclusory statements about the impact of rules on small businesses contrary to record evidence do not comply with the Regulatory Flexibility Act.⁴⁸

D. Access Charges for Unbundled Network Elements.

The Rural Telephone Coalition ("the RTC") argues in its Petition that the FCC's decision to exempt users of unbundled network elements from paying access charges for interstate access is unlawful and contrary to the intent of Congress, as expressed in the Telecommunications Act of 1996, to promote universal service and competition.⁴⁹ The RTC's petition should be summarily dismissed with respect to these issues because the FCC has already addressed these matters on two occasions and found in both cases the same arguments as are raised by the RTC in its petition to be specious. In Access Charge Reform Stay Order,⁵⁰ the FCC denied a petition filed by Pacific Bell, Nevada Bell, and Southwestern Bell Telephone Company ("Petitioners") to stay, inter alia, that portion of the

⁴⁷ Petition at 9-10, 20.

⁴⁸ National Truck Equipment Assoc. v. National Highway Traffic Safety Admin., 919 F.2d 1148, 1157 (6th Cir. 1990).

⁴⁹ Rural Telephone Coalition Petition at 3-5, 8-21.

⁵⁰ Access Charge Reform, CC Docket No. 96-262, FCC 97-216, released June 18, 1997 ("Access Charge Reform Stay Order").

First Report which finds that interstate access charges are not applicable to unbundled network elements. Thus, the RTC's petition warrants no further consideration.

IV. CONCLUSION

For these reasons, the FCC should reconsider its First Order and adopt the rule and policy changes proposed herein.

Respectfully submitted,

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Its Attorneys

United States Senate

WASHINGTON, DC 20510

July 25, 1997

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M. Street, NW
Washington, D.C. 20554

Dear Chairman Hundt:

We are writing to register our concern over the FCC's recent decision to alter rules regarding the rate structure and pricing of switched access transport in its May 16 First Report and Order on access charge reform (CC Docket No. 96-262). As the final piece of the FCC's so-called "trilogy" of implementation proceedings, this order is critical in achieving the competition policies described in the Telecommunications Act of 1996.

The specific issue is the way in which the order changes the rules governing rates for "tandem-switched transport," a type of switched local transport that carries interexchange traffic between the local exchange end office nearest the customer and the long distance carrier's network. As you know, if an interexchange carrier does not have traffic in a given locality sufficient to justify using "direct-trunked transport," tandem transport is the only rational access option. Indeed, tandem transport is the predominant method used throughout the nation by all but the largest long distance carriers. Moreover, since carriers serving less densely populated areas typically do not have large traffic volumes, tandem transport is the option of choice for all carriers in rural areas.

The Senate Commerce Committee has had long-standing concerns over any move by the FCC to alter access pricing rules where the immediate effect would be to diminish competition in rural and less populated suburban areas. When the FCC last considered this issue several years ago, many of us urged you to weigh carefully the impacts of your proposals in CC Docket 91-213 and to avoid unjustified or discriminatory differences in the pricing of direct-trunked and tandem transport. We were pleased with the FCC's prudent adoption of a "unitary" rate structure, which time has shown to be a workable formula for reasonable rates and competitive choices throughout the nation.

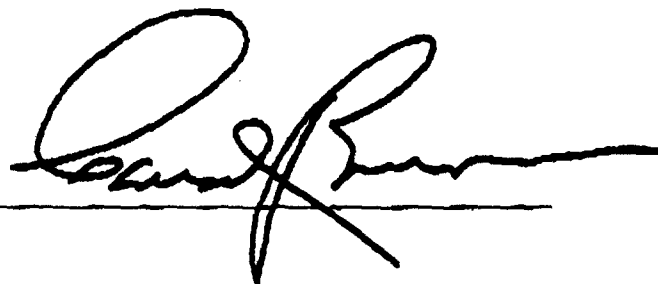
Unfortunately, your recent decision seems to reverse this wise policy and to prescribe substantial increases in the price of tandem transport -- without any benefit of cost studies, and seemingly in disregard of the estimates of tandem switching costs adopted by both the FCC and several states in recent interconnection proceedings. According to the written testimony of Joseph Gillian for CompTel, submitted for our June 3rd subcommittee hearing, your recent decision on access transport could increase the transport costs of smaller carriers on the order of several hundred percent -- a completely unacceptable proposition for carriers

operating in less populated areas where access costs are a critical factor in the decision on whether to serve -- or abandon -- a particular area.

These are precisely the areas where competition has been slower to develop. Any policy change that threatens the competition that has been established in less populated areas must be carefully scrutinized. It was not the Senate Commerce Committee's intent that the Act be used to promote the interests of larger carriers over smaller ones. Moreover, we understand that the empirical data underpinning this dramatic change is tenuous, at best. It is our understanding that under the FCC's order, tandem transport rates are to be determined by an arbitrary and unverified revenue allocation, in contrast to other forms of access, which are based upon actual costs.

The non-urban businesses and residents who use the services of the smaller and medium-sized long distance carriers are now getting the carrier choice, service options, and innovations that many urban customers take for granted. Depriving these customers of such benefits in furtherance of an unnecessary and dubious access pricing change is directly contrary to the intent of Congress in enacting the 1996 Act. As the FCC reviews its order in the months ahead, we are hopeful that you will reconsider this potentially disastrous change and replace it with a switched access pricing system that continues to promote choice in all areas of the country.

Thank you for your attention to this matter.



Sincerely,

